IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

Bail Appl..No. 7713 of 2007()

CRIME NO.397/07 OF PEERUMEDU POLICE STATION

: PETITIONER/ACCUSED

RAJAPPAN, AGED 55, S/O. SEKHARAN,
PUTHENPURACKAL HOUSE, VALUKADU,
NELLIBARIA ESTATE, ELAPPARA VILLAGE.

BY ADV. SRI.A.AHZAR

RESPONDENTS: RESPONDENTS

---

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA,ERNAKULAM.

2. SUB-INSPECTOR OF POLICE
PEERUMEDU POLICE STATION
IDUKKI.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7713 of 2007

Dated this the 14th day of December, 2007

ORDER

Application for anticipatory bail. Petitioner faces allegations under the Kerala Abkari Act. On 25.11.07 on receipt of discreet prior information that sale of Indian Made Foreign Liquor was unauthorisedly being carried out by the petitioner in a shed in his possession, the police party reached the scene. The petitioner was not available to be apprehended. 2 litres of Indian Made Foreign Liquor was found available in the premises. Seizure was effected. Crime was registered. Investigation is in progress. The petitioner has not been apprehended so far.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He now owns having kept 2 litres of Indian Made Foreign Liquor in his possession, but contends that it was purchased by him through licit sources and he had kept the same in his possession lawfully and legally. There is no offence committed by him in keeping possession of 2 litres of Indian Made Foreign Liquor, argues the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the allegation is in not keeping possession of the articles but keeping possession of the same unauthorisedly for its illicit sale. The materials collected now indicate the complicity of the petitioner for the offences under Section 55 (i) of the Kerala Abkari Act and in these circumstances, the mere fact that the petitioner has now come long after the incident claiming to have a bill to show its purchase is itself no sufficient reason to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor.

4. Having considered all the relevant circumstances, I find merit in the opposition by the learned Public Prosecutor. It is for the petitioner to appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and

applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-